

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARL GUTIERREZ,

Plaintiff,

v.

No. 1:21-cv-00818-KWR-JFR

FEDERAL BUREAU OF INVESTIGATION, *et al*,

Defendants.

ORDER OF DISMISSAL

THIS MATTER is before the Court following Plaintiff Carl Gutierrez's failure to prosecute his *pro se* prisoner civil action. Plaintiff is detained at the Cibola County Correctional Institution. Pursuant to 28 U.S.C. § 1915, the Court directed him to prepay the \$402 filing fee, or alternatively, file a motion to proceed *in forma pauperis* along with a six-month inmate account statement. *See* Doc. 2. Plaintiff filed the motion but did not attach the required account statement. *See* Doc. 3. The Court entered a second Order directing him to cure the deficiency by October 18, 2021. *See* Doc. 4. Both Orders warned that the failure to timely comply will result in dismissal of this case without further notice.

Plaintiff failed to submit an inmate account statement or respond to the second Order. Accordingly, the Court will dismiss this action without prejudice pursuant to Fed. R. Civ. P. 41(b) for "failure to prosecute [and] comply with the ... court's orders." *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003). *See also Salazar v. Arapahoe Cty. Det. Facility*, 787 Fed. App'x 542, 543 (10th Cir. 2019) (affirming dismissal where "none of [plaintiff's] letters addressed the inmate account statement or explained his failure to comply with the ordered deadline"); *Sheptin v. Corr. Healthcare Mgmt. Contractor Co.*, 288 Fed. App'x 538, 540-41 (10th Cir. 2008) ("district

court did not abuse its discretion by dismissing [Plaintiff's] action without prejudice based upon his failure to ... submit his ... six-month account statement"). The Court will also deny the pending Motion to Proceed *In Forma Pauperis* (Doc. 3), which is now moot.

IT IS ORDERED that Plaintiff Carl Gutierrez's Civil Complaint (**Doc. 1**) is **DISMISSED WITHOUT PREJUDICE**; and the Court will enter a separate judgment closing the civil case.

IT IS FURTHER ORDERED that Plaintiff's Motion to Proceed *in Forma Pauperis* (**Doc. 3**) is **DENIED AS MOOT**.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE